

ORDINANCE NO. O2015-11

AN ORDINANCE OF THE CITY OF WILDWOOD, FLORIDA, CHANGING AND AMENDING, RESTATING, SUPERSEDING AND REPLACING THE SPECIAL MAGISTRATE CODE ENFORCEMENT PROCEDURE FOR THE CITY OF WILDWOOD (CHAPTER 2; ARTICLE V OF THE CODE OF ORDINANCES); PROVIDING FOR PURPOSE AND FINDINGS; PROVIDING FOR DEFINITIONS; REVISING THE CODE ENFORCEMENT RULES, PROCEDURES, AND NOTICE REQUIREMENTS; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the City Commission of Wildwood, Florida, as follows:

Section 1. Purpose.

This article amends, restates, supersedes and replaces the current Special Magistrate Code Enforcement Procedure found in the City of Wildwood Code of Ordinances in order to clarify the Code Enforcement Procedure and better conform the same to Chapter 162 of the Florida Statutes.

Section 2. Findings.

The City Commission finds that the Current Special Magistrate Code Enforcement Procedure should be updated and amended to provide for a more effective administration and enforcement of the City of Wildwood Code of Ordinances, as well as to better conform to the procedures set forth in Chapter 162 of the Florida Statutes.

Section 3.

The City Commission adopts in full the restated, amended and revised language of the Code Enforcement Procedures as set forth in **Exhibit 'A'** attached hereto.

Section 4.

Any existing ordinance of the City of Wildwood, or portions thereof, in conflict with the terms of this ordinance are hereby repealed.

Section 5.

If any section, sentence, clause, phrase or word of this Ordinance is for any reason held or declared unconstitutional, inoperative, or void, such holding or invalidity shall not affect the remaining portions of this Ordinance, and it shall be construed to have been the Commission's intent to pass this Ordinance without such unconstitutional, invalid, or inoperative part therein.

Section 6. Effective date.

This Ordinance shall take effect immediately upon its final adoption by the City Commission.

PASSED AND ORDAINED this 11th day of May, 2015, by the City Commission of the City of Wildwood, Florida.

SEAL

CITY COMMISSION
CITY OF WILDWOOD, FLORIDA

ATTEST: Cassandra Lippincott
Cassandra Lippincott, City Clerk

Ed Wolf
Ed Wolf, Mayor

First Reading: April 13, 2015
Second Reading: May 11, 2015

Approved as to form:

Ashley S. Hunt
Ashley S. Hunt, City Attorney

EXHIBIT 'A'

ARTICLE V. - SPECIAL MAGISTRATE CODE ENFORCEMENT PROCEDURE

FOOTNOTE(S):

(10) State Law reference— Municipal code enforcement, F.S. ch. 162.

Sec. 2-121. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Code means any of the several chapters of the city's Code or its ordinances on zoning and development regulations or any other codes or technical codes of the city.

Code officer or *officer* means any authorized agent or employee of the city whose duty it is to assure code compliance. Code officer includes any police officer. Code officer also includes any code inspector.

Legal counsel means the city attorney, who shall represent the city, or its special magistrate.

Repeat violation means a violation of a provision of a code or ordinance by a person whom the code enforcement special magistrate has previously found to have violated the same provision within five years prior to the violation, notwithstanding the violations occur at different locations.

Violator means the property owner, tenant, or business entity of the premises, or any combination thereof.

Cross reference— Definitions and rules of construction generally, § 1-2.

State law reference— Similar provisions, F.S. § 162.04

Sec. 2-122. - Special magistrate for municipal code enforcement created.

(a) It is the intent of this article to establish municipal code enforcement through special magistrates with the authority to impose administrative fines and other noncriminal penalties to promote, protect, and improve the health, safety, and welfare of the citizens of the city and to provide an equitable, expeditious, effective, and inexpensive method of enforcing any of the city's codes and ordinances in force where a pending or repeated violation exists or continues to exist. This article has been enacted pursuant to the authority of F.S. ch. 162.

(b) The city code enforcement special magistrates shall have jurisdiction to hear and decide cases in which violations are alleged of any provisions of the city's Code and its ordinances.

(c) Any alleged violation of the codes and ordinances may also be enforced in any court of competent jurisdiction.

State law reference— Special magistrates authorized, F.S. § 162.04.

Sec. 2-123. - Alternate code enforcement system.

The city hereby adopts an alternate code enforcement system which gives code enforcement special magistrates appointed by the mayor and approved by city commission the authority to hold hearings and assess fines against violators of the city's codes and ordinances.

Sec. 2-124. - Oath of office.

Each special magistrate upon appointment, shall, before entering upon the discharge of his duties of office, take an oath of office as required by the city charter.

State law reference— Oath of public employees, F.S. § 876.05.

Sec. 2-125. - Special magistrate.

Special magistrates shall have all the duties and responsibilities and shall carry out all the functions and procedures provided in F.S. ch. 162.

Sec. 2-126. - Enforcement procedure.

(a) It shall be the duty of the responsible city departments to initiate enforcement proceedings of the various codes and ordinances; special magistrates shall not have the power to initiate such enforcement proceedings.

(b) Except as provided in subsection (c) and section 2-127, in the case of a first-time violation of the city's codes and ordinances, the code officer shall notify the violator and property owner and give them a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the officer shall notify a special magistrate and request a hearing. The special magistrate shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided by this article to the violator and property owner. At the option of the special magistrate, notice may additionally be served by publication or posting as provided by this article. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code officer, the case may be

presented to the special magistrate even if the violation has been corrected prior to the hearing, and the notice shall so state.

(c) If a repeat violation is found, the officer shall notify the violator and property owner but is not required to give the violator a reasonable time to correct the violation. The officer, upon notifying the violator of a repeat violation, shall notify the special magistrate and request a hearing. The special magistrate shall schedule a hearing and shall provide notice as provided by this article to the violator and property owner. The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. If the repeat violation has been corrected, the special magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violators. The repeat violator may choose to waive his or her rights to this hearing and pay said costs as determined by the special magistrate.

(d) If the owner of property that is subject to an enforcement proceeding before the special magistrate, or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(4) File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

A failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

State law reference— Special magistrates authorized, F.S. § 162.04 and 162.06.

Sec. 2-127. - Violations; hearings.

If the officer has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the officer shall make a reasonable effort to notify the violator and property owner and may immediately notify a special magistrate and request a hearing thereon.

State law reference— Similar provisions, F.S. § 162.06(4).

Sec. 2-128. - Conduct of hearings.

The special magistrate shall adopt rules for governing the conduct of his affairs consistent with the provision of this article, and specifically:

(1) Upon request of the code officer, or at such other times as may be necessary, the special magistrate may set hearings. All hearings shall be open to the public.

(2) The special magistrate may set additional meetings and locations as required.

(3) Minutes shall be kept of all hearings. All testimonies shall be under oath and mechanically recorded.

(4) The city shall provide a hearing room, clerical and administrative personnel as may be reasonably required by the special magistrate to conduct his hearing and perform his duties.

(5) Each case before the special magistrate shall be presented by the department head, or his designee, of the city department which is charged with the responsibility for enforcement of these specific code sections alleged to have been violated. Additionally, a designated representative may present cases before the special magistrate. If the local governing body prevails in prosecuting a case before the enforcement board, it shall be entitled to recover all costs incurred in prosecuting the case before the special magistrate and such costs may be included in the lien authorized under section 2-131(d).

(6) All relevant evidence shall be admitted if, in the opinion of the special magistrate, it is the type of evidence upon which reasonable and responsible persons would normally rely in the conduct of business affairs, regardless of the existence of any common law or statutory rule which might make such evidence inadmissible over objections in a civil action. The special magistrate may exclude irrelevant or unduly repetitious evidence.

(7) Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross examine opposing witnesses, impeach witnesses and rebut evidence.

(8) The alleged violator has the right, at his own expense, to be represented by an attorney at any hearing.

(9) All testimony before the special magistrate shall be under oath and shall be recorded. The alleged violator or the city may cause the proceedings to be recorded by a certified court reporter or by a certified recording instrument.

(10) The burden of proof shall be with the code officer to show by the greater weight of the evidence that a code violation exists and that the alleged violator committed, or was responsible for maintaining, the violation.

(11) If notice has been provided pursuant to this article to an alleged violator of the public hearing, the hearing may be conducted and an order rendered in the absence of the violator.

(12) At the conclusion of the hearing, the special magistrate shall issue findings of fact, based on evidence of record, and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted herein. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by such date.

(13) A certified copy of such an order or a citation may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property. The findings of the order shall be binding upon the violator, and, if the violation concerns real property, any subsequent purchaser, successors in interest, or assigns.

State law reference— Conduct of hearing, F.S. § 162.07.

Sec. 2-129. - Compliance.

If an order is recorded in the public records pursuant to section 2-128 and the order is complied with by the date specified in the order, the special magistrate shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

State law reference— Similar provisions, F.S. § 162.07(4).

Sec. 2-130. - Powers of special magistrate.

The special magistrate shall have the power to:

- (1) Adopt rules for the conduct of his or her hearings.
- (2) Subpoena alleged violators and witnesses to his hearings. Subpoenas may be served by the police department of the city.
- (23) Subpoena evidence to his or her hearings.
- (34) Take testimony under oath.
- (45) Issue orders having the force of law commanding whatever steps are necessary to bring the violation into compliance.

State law reference— Similar provisions, F.S. § 162.08.

Sec. 2-131. - Administrative fines; liens.

(a) The special magistrate, upon notification by the officer that a previous order of the special magistrate has not been complied with by the set time or, upon finding that a repeat violation has been committed, may order the violator to pay a fine in the amount specified in F.S. § 162.09 for each day the violation continues past the date set by the special magistrate for

compliance or, in the case of a repeat violation, for each day the repeat violation continues past the date of notice to the violator of the repeat violation. In addition, if the violation is a violation described in section 2-127, the special magistrate shall notify the city commission, which may make all reasonable repairs or undertake such other remedies which are required to bring the property into compliance or eliminate the violation and the special magistrate may charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the city to make further repairs or to maintain the property and does not create any liability against the city or its agents or assigns for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this article, a hearing shall not be necessary for the issuance of an order imposing the fine. If, after due notice and hearing, a code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in F.S. § 162.09.

(b) In formulating his order, the special magistrate should be consistent in the imposition of fines, paying special attention to the gravity of the violation, any actions by a violator to correct the violation, and any previous violations committed by the violator.

(c) The special magistrate may reduce a fine imposed pursuant to this section. If, however, the subject violator fails to pay the reduced fine within a period of 60 days from the day the order is rendered deciding the fine, then the original fine shall be reinstated. If the violator makes arrangements through the special magistrate or clerk of the city to pay the reduced fine in monthly payments and fails to timely make any one of the monthly payments, then the original fine, less payment made, shall be automatically reinstated.

(d) A certified copy of an order imposing a fine may be recorded in the public records of the county and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of the state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this article shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the city, and the city commission may execute a satisfaction or release of lien entered pursuant to this section. After three months from the filing of any such lien which remains unpaid, the special magistrate may authorize the city attorney's office to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to provisions of this article may be foreclosed on real property which is a homestead under § 4, art. X, of the state Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under s. 4(a), Art. X of the State Constitution.

State law reference— Similar provisions, F.S. § 162.09.

Sec. 2-132. - Duration of lien.

No lien provided under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien or an action to recover a money judgment for the amount of the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien or for a

money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The city shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

State law reference— Similar provisions, F.S. § 162.10.

Sec. 2-133. - Appeal.

An aggrieved party, including the city, may appeal a final administrative order of the special magistrate to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special magistrate. An appeal shall be filed within 30 days from the date of the rendition of the order to be appealed. A copy of the notice of appeal shall be filed with the secretary for the special magistrate and to the clerk of circuit court, appellate division for the fifth judicial circuit of the state.

State law reference— Appeals, F.S. § 162.11.

Sec. 2-134. - Rehearing provision.

A party who meets the criteria set forth in this section may move for a new hearing on the matter. A motion for rehearing must be served within ten days after filing the special magistrate's order. The time cannot be extended. A motion that is served within the ten-day period may be amended to allege new grounds with permission of the special magistrate. The time for service of the motion is ten days after the filing of the special magistrate's order. On his own initiative, the special magistrate may order a rehearing within ten days after the entry of the special

magistrate's order or within the time for ruling on a timely motion for a rehearing made by a party. A timely motion by a party extends the time for the special magistrate to act on its own initiative. After timely service of a motion, the time to file a notice of appeal runs from the date of rendition of the order on the motion, not from any special magistrate's order that has been entered. If a notice of appeal is filed by the moving party before the motion for rehearing is heard, the motion is waived. The grounds for a motion for rehearing fall into one or more of the following categories:

- (1) Errors on the face of the record.
- (2) Errors committed during the public hearing.
- (3) Misconduct of the special magistrate.
- (4) Misconduct of a party.
- (5) Misconduct of a third person.
- (6) Misconduct of a witness.
- (7) Newly discovered evidence.
- (8) The verdict is contrary to the evidence.
- (9) The verdict is contrary to law.

Sec. 2-135. - Notices.

(a) All notices required by this article shall be provided to the alleged violator and property owner by:

(1) Certified mail, return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The city may also provide an additional notice to any other address it may find

for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraph (b)(3).

(2) Hand delivery by the city police department or other law enforcement officer, a code officer, or other person designated by the City Manager;

(3) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age by informing such person of the contents of the notice; or

(4) In the case of commercial premises, leaving the notice with the manger or other person in charge.

(b) In addition to providing notice as set forth in subsection (a), at the option of the special magistrate, notice may also be served by publication or posting, as follows:

(1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements.

(2) Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

(3) In lieu of publication as described in paragraph (a), such notice may be posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in two locations, one of which shall be the property upon which

the violation is alleged to exist and the other of which shall be at the Wildwood City Hall, Wildwood, Florida.

Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(34) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a).

(c) Evidence that an attempt has been made to hand deliver or mail notices provided in subsection (a), together with proof of publication or posting as provided in subsection (b), shall be sufficient to show that the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.

State law reference— Similar provisions, F.S. § 162.12.

Sec. 2-136. - Supplemental enforcement.

Nothing contained in this article shall prohibit the city from enforcing its codes by any other means, including specifically, but without limitation, section 13-31 et seq. and the weeds and debris ordinance (Ordinance No. 149, as amended).

State law reference— Similar provisions, F.S. § 162.13).

Sec. 2-137. - Conflict of interest.

Conflict of interest provisions shall apply to a special magistrate pursuant to F.S. §§ 112.3143 and 286.012.